

Honorable Judge Ricardo S. Martinez

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION**

DERECK CASE, individually, and as  
representative of a Class of Participants and  
Beneficiaries of the General Power Systems,  
Inc. Employee 401(k) Savings Plan,

Plaintiff,

v.

GENERAC POWER SYSTEMS, INC., THE  
BOARD OF DIRECTORS OF GENERAC  
POWER SYSTEMS, INC., and JOHN DOES  
1-30,

Defendants.

Case No. 2:21-cv-00752-RSM

**DEFENDANTS' REPLY  
MEMORANDUM OF LAW IN  
SUPPORT OF THEIR MOTION TO  
TRANSFER VENUE TO THE  
EASTERN DISTRICT OF WISCONSIN**

Note on Motion Calendar: August 27, 2021

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1 **I. PRELIMINARY STATEMENT**

2 Plaintiff opposes the transfer of this case to the Eastern District of Wisconsin by arguing  
3 that the Plan's forum selection clause does not apply to breach-of-fiduciary-duty claims. He also  
4 suggests Defendants have not established that the nine balancing factors clearly weigh in favor of  
5 transfer. Plaintiff is wrong on all counts. First, the plain language of the Plan's forum selection  
6 clause applies to "**any** legal action ... in connection with the Plan," which necessarily includes  
7 ERISA breach-of-fiduciary-duty claims. The language in the Summary Plan Description  
8 ("SPD") is similarly clear that a legal action alleging that "Plan fiduciaries misuse the Plan's  
9 money," as Plaintiff claims here, must be brought in the Eastern District of Wisconsin

10 "[A] proper application of § 1404(a) requires that a forum-selection clause be 'given  
11 controlling weight in all but the most exceptional cases.'" *Atl. Marine Constr. Co. v. U.S. Dist.*  
12 *Court for W. Dist. of Tex.*, 571 U.S. 49, 59-60, 63 (2013) (citation omitted). To demonstrate that  
13 this is an "exceptional case" and the Plan's forum selection clause should not apply, Plaintiff had  
14 the "burden of showing that public-interest factors overwhelmingly disfavor a transfer." *Id.* at  
15 64, 67. These factors are "[1] the administrative difficulties flowing from court congestion; [2]  
16 the local interest in having localized controversies decided at home; [and] [3] the interest in  
17 having a trial of a diversity case in a forum that is at home with the law." *Id.* at 62, n.6 (internal  
18 citation omitted). "Because [the public-interest] factors will rarely defeat a transfer motion, the  
19 practical result is that forum-selection clauses should control except in unusual cases." *Id.* at 64.  
20 Because this is not an unusual case, the Court should apply the Plan's forum selection clause.  
21 But even if the forum selection clause did not apply, the nine-factor balancing test still clearly  
22 weighs in favor of transfer.

23 **II. ARGUMENT**

24 **A. The Forum Selection Provisions Require Transfer to the Eastern District of**  
25 **Wisconsin.**

26 Plaintiff concedes that enforcement of the forum selection clause would not be

unreasonable (Pl’s Opp. at 7), but argues that the Plan and SPD language limit the forum selection clause to actions challenging the denial of benefits. This is not true. Plan Section 14.4 begins by discussing what the requirements are (as well as the applicable limitations period)<sup>1</sup> for a participant to exhaust the Plan’s administrative remedies before bringing a legal action for Plan benefits. See Dkt. 26-1 at p. 80 (Section 14.4, stating that “[t]he participant may not bring a legal action to receive benefits under the Plan until the following criteria are satisfied....”). However, after describing the specific exhaustion limitation on an action for benefits, Section 14.4 goes on to state: “Further, **any legal action**, brought against the Plan, or against the Plan Administrator, or Plan Sponsor **in connection with the Plan**, must be brought in the Federal District Court for the Eastern District of Wisconsin.” *Id.* (emphasis added). Courts have held that forum selection clauses covering “any action in connection with the Plan” apply to breach-of-fiduciary-duty claims. See, e.g., *Wallace v. Int’l Paper Co.*, No. 20-00242, 2020 WL 4938361, at \*5-6 (C.D. Cal. July 2, 2020) (granting motion to transfer and holding that forum selection clause covering “actions in connection with the Plan” covered all ERISA claims, including breach-of-fiduciary-duty claims); *Haughton v. Plan Adm’r of Xerox Corp. Ret. Income Guarantee Plan*, 2 F. Supp. 3d 928, 932 (W.D. La. 2014) (granting motion to transfer and holding that “any action in connection with the Plan” was used “to denote that the forum selection clause applies to any action arising under ERISA”; applying such language to claim for breach of fiduciary duty).

In addition, it is clear that the phrase “any legal action” in the Plan’s forum selection clause is different than the phrase “any legal action to recover benefits” in the Plan’s exhaustion provisions. Federal common law principles of contract interpretation guide the interpretation of ERISA plan terms. See *Richardson v. Pension Plan of Bethlehem Steel Corp.*, 112 F.3d 982, 985

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<sup>1</sup> ERISA does not establish a statute of limitations for benefit claims, and plans are allowed to require their own reasonable limitations period for such claims. See *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 571 U.S. 99, 105-06 (2013) (“a participant and a plan may agree by contract to a particular limitations period ... as long as the period is reasonable”). In contrast, ERISA contains an express statute of limitations for breach-of-fiduciary-duty claims, which is why there was no need to address it in the Plan. See 29 U.S.C. § 1113 (establishing limitations periods for when an action must be commenced “with respect to a fiduciary’s breach”).

1 (9th Cir. 1997). The “terms in an ERISA plan should be interpreted ‘in an ordinary and popular  
2 sense as would a [person] of average intelligence and experience.’” *Id.* (quoting *Evans v. Safeco*  
3 *Life Ins. Co.*, 916 F.2d 1437, 1441 (9th Cir. 1990)). Here, the fact that the Plan did not limit the  
4 forum selection clause’s application to claims “for plan benefits” confirms that the forum  
5 selection clause is not so limited. *Cf. Jenkins v. Fitzgerald Marine & Repair*, No. 07-123, 2008  
6 WL 4790343 at \*4 (E.D. Mo. Oct. 27, 2008) (where language limiting indemnification to claims  
7 “in connection with [defendant’s] operations” was used in one indemnity clause of a contract  
8 covering injuries to employees, its omission in another clause covering any other claims was  
9 intentional), *aff’d sub nom. In re Fitzgerald Marine & Repair, Inc.*, 619 F.3d 851 (8th Cir. 2010).

10 The SPD similarly makes clear that the forum selection clause does not apply solely to  
11 claims for benefits. As Plaintiff notes, the SPD contains two bullets that discuss the Plan’s  
12 forum selection requirement. The first bullet explains what the forum selection provision  
13 requires for participants who want to bring a benefits claim, stating: “If you have a claim for  
14 benefits that is denied or ignored, in whole or in part, you may file suit in federal court in the  
15 Eastern District of Wisconsin.” Dkt. 26-2 at pp. 32-33. The second bullet explains what the  
16 forum selection provision requires for a participant who wants to bring a breach-of-fiduciary-  
17 duty or retaliation claim, stating: “If it should happen that the Plan fiduciaries misuse the Plan’s  
18 money, or if you are discriminated against for asserting your rights ... you may file suit in federal  
19 court in the Eastern District of Wisconsin.” *Id.* The plain meaning of this language is that the  
20 forum selection clause applies to breach-of-fiduciary-duty claims and not just claims for benefits.  
21 *See Carlisle v. Bd. of Trs. of Am. Fed’n of N.Y. State Teamsters Conf. Pension & Ret. Fund*, No.  
22 20-8793, 2021 WL 1512702 at \*2, \*5 (S.D.N.Y. Apr. 16, 2021) (enforcing forum selection  
23 clause as applied to claim for breach of fiduciary duty and granting motion to transfer, where  
24 SPD stated: “*If it should happen that Plan fiduciaries misuse the Plan’s money ... you may file*  
25 *suit in a Federal court ... in the United States District Court for the Northern District of New*  
26

York”) (emphasis added).<sup>2</sup>

Finally, the Court may easily dispose of Plaintiff’s suggestion that the doctrine of *contra proferentum* requires construing the forum selection provisions against Defendants. First, as discussed above, the Plan and SPD’s forum selection provisions are not ambiguous, so there is no basis for invoking the doctrine. Second, even if the forum selection language were ambiguous, *contra proferentum* would not apply because the Plan grants the Plan Administrator discretion to construe its terms. See *Blankenship v. Liberty Life Assur. Co. of Bos.*, 486 F.3d 620, 625 (9th Cir. 2007) (explaining that the rule of *contra proferentum* “applies in interpreting ambiguous terms in an ERISA-covered plan except where the plan: ... grants the administrator discretion to construe its terms”); Declaration of Cheryl Brand (“Brand Decl.”) ¶¶ 13-16, Ex. A, Plan at § 14.1 (Dkt. 26 at p. 3, Dkt. 26-1 at p. 77) (stating that “[t]he Plan Administrator shall have the discretionary power and authority to administer the Plan ...,” including “interpret the terms and provisions of the Plan”).

In short, the Plan’s forum selection clause applies to claims for breach of fiduciary duty, not just claims for benefits. Thus, the Court should grant Defendants’ motion to transfer venue to the Eastern District of Wisconsin for this reason alone.

**B. The Relevant Factors Dictate Transferring This Action to the Eastern District of Wisconsin.**

Because there is a valid forum selection clause, the Court need not address the nine private-interest balancing factors, and it is not Defendants’ burden to show those factors favor a transfer. See *Atl. Marine Constr. Co.*, 571 U.S. at 64, 67. Instead, the Court need only consider whether *Plaintiff* met his “burden of showing that public-interest factors overwhelmingly disfavor a transfer.” *Id.* at 67. As noted above, these public interests are “[1] the administrative difficulties flowing from court congestion; [2] the local interest in having localized controversies

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<sup>2</sup> Plaintiff also suggests that an earlier sentence in the SPD describing a participant’s right to know why a claim for benefits is denied also limits the forum selection clause to claims for benefits. This is illogical and inconsistent with the language of the SPD describing other types of ERISA claims to which the forum selection clause applies.



1 decided at home; [and] [3] the interest in having the trial of a diversity case in a forum that is at  
2 home with the law.” *Id.* at 62, n.6 (internal citation omitted); *see also Wallace*, 2020 WL  
3 4938361 at \*6-7. Plaintiff has not met this burden, as none of these factors disfavor transfer.  
4 Moreover, even if this Court were to consider all nine private and public factors, Plaintiff is  
5 wrong in arguing that most factors are neutral or irrelevant; instead, they weigh in favor of  
6 transfer to the Eastern District of Wisconsin.

7 1. Private Factor - The Eastern District of Wisconsin Is the Locus of the Plan  
8 Execution and the Alleged Misconduct.

9 Plaintiff argues (with no supporting case law) that the fact that he worked in Washington  
10 and therefore accessed Plan documents in Washington balances out the fact that the Plan was  
11 executed in Wisconsin. Pl’s Opp. at 11. Plaintiff conveniently ignores two other relevant facts:  
12 (1) the Plan was also administered in Wisconsin; and (2) any alleged breach of fiduciary duty  
13 committed by Defendants would have occurred in Wisconsin. That Plaintiff worked in  
14 Washington and accessed Plan documents there has no bearing on where the Plan was executed  
15 or where the alleged misconduct giving rise to his claims occurred. Accordingly, this factor  
16 weighs in favor of transfer. *See* Defs’ Br. at 8-9.

17 2. Private Factor - Plaintiff’s Choice of Forum Deserves Minimal Deference  
18 in a Putative Class Action Where the Alleged Misconduct Occurred  
19 Elsewhere.

20 Plaintiff attempts to distinguish this case from *Mayfield v. ACE Am. Ins. Co.*, No. C18-  
21 1695, 2019 WL 2084489 at \*2 (W.D. Wash. May 13, 2019), which held that in a putative ERISA  
22 class action, any deference to the plaintiff’s choice of forum is reduced. First, Plaintiff contends  
23 that it does not matter how many of the putative class members are in Wisconsin compared to  
24 Washington because Plaintiff would be representing all members of the class and “few, if any,  
25 class Members from Wisconsin will be actively involved in this action.” Pl’s Opp. at 13.  
26 *Mayfield* does not support this distinction, as that case was also a putative ERISA class action  
where the plaintiff would be representing all members of the class, and the court held that it *did*

1 matter where the putative class members were located. *See Mayfield*, 2019 WL 2084489 at \*2  
2 (“although both sides speculate as to the location of potential class members, the record appears  
3 clear that significantly more class members will be located in or near Georgia than in or near  
4 Washington State.”).

5 Here, Plaintiff admits that “the proposed Class consists mostly of Wisconsin employees”  
6 (Pl’s Opp. at 13), and therefore this factor weighs in favor of transfer. Plaintiff’s speculation that  
7 few, if any, class members will be actively involved in this action is not relevant to the Court’s  
8 analysis.

9 Additionally, Plaintiff claims that this case is unlike *Mayfield* and *M.K. Visa Cigna*  
10 *Network POS Plan*, No. 12-04652, 2013 WL 2146609 at \*3 (N.D. Cal. May 15, 2013), because  
11 “significant” operative facts and “relevant” conduct occurred within Washington. But the  
12 location of Plaintiff’s residence and work are not significant operative facts or relevant conduct  
13 in an action claiming that ERISA fiduciaries breached their duties with respect to selecting and  
14 maintaining the plan’s investments or negotiating the plan’s fee structure. *Cf., e.g., Burgess v.*  
15 *HP, Inc.*, No. 16-04784, 2017 WL 467845 at \*5 (N.D. Cal. Feb. 3, 2017) (“[a] breach of  
16 fiduciary duties ... [occurs in the place] where the defendants commit or fail to commit the  
17 actions that their duties require”).

18 3. Private Factor - The Parties Have Extensive Contacts with the Eastern  
19 District of Wisconsin and Limited Contacts with the Western District of  
20 Washington.

21 Plaintiff, again, reframes this factor, which addresses *both* parties’ contacts with the  
22 forum, and focuses primarily on the fact that *he* lives in Washington and would prefer to litigate  
23 in Washington because it is more convenient than Wisconsin. He argues that because he and an  
24 extremely small number of other employees live, work in and received Plan documents in  
25 Washington, this factor weighs against transfer. He is wrong. As previously noted in  
26 Defendants’ moving brief, there are only 14 putative class members who reside in Washington,  
while almost 5,000 reside in Wisconsin. Defs’ Br. at 11-12. Moreover, as discussed *supra*,

1 where, as here, the locus of the alleged misconduct occurred in the Eastern District of Wisconsin  
2 (where the Plan was executed and administered, where four of the five Benefit Committee  
3 members reside and where any alleged fiduciary breach would have occurred), this makes  
4 Plaintiff's residence in Washington far less relevant.

5 In addition, while Plaintiff argues that it would not be more difficult or expensive for  
6 Defendants and Generac's employees to litigate in Washington, this is based on the faulty  
7 assumption that there would be no burden or difficulty in requiring Defendants and other  
8 Generac employee witnesses to travel halfway across the country to Seattle for trial. Pl's Opp. at  
9 14-15.<sup>3</sup> As Plaintiff's attorneys (all experienced ERISA attorneys) are aware, trials in cases like  
10 this tend to last weeks. *See, e.g., Sacerdote v. N.Y. Univ.*, No. 16-6284, ECF No. 234 (S.D.N.Y.)  
11 (stating that the trial would extend over several weeks, including April 16-19 and April 23-26,  
12 2018; *see also* unnumbered minute entries for dates); *Brotherston v. Putnam Invs., LLC*, No. 15-  
13 13825, ECF Nos. 172-185, 193-199 (D. Mass) (transcript and electronic clerk's notes reflecting  
14 seven-day trial took place over the course of 12 days from 4/7/2017-4/19/2017); *Wildman v. Am.*  
15 *Century Servs., LLC*, No. 16-00737, ECF Nos. 193, 257, 259-264, 266, 270-71, 275 (W.D. Mo.)  
16 (notice of hearing that bench trial was set to take place over the course of 17 days between  
17 9/4/2018-9/21/2018, and trial minute entries reflecting a trial that lasted 11 days and ran from  
18 9/4-9/20/2018); *Tussey v. ABB, Inc.*, No. 06-04305, ECF Nos. 516-17, 519, 522, 524-25, 530,  
19 532, 535, 539, 542-46, 550 (W.D. Mo.) (minute entries of 16-day trial that took place over the  
20 course of 23 days); *Pledger v. Reliance Tr. Co.*, No. 15-4444, ECF Nos. 242-251 (N.D. Ga.)  
21 (minute entries reflecting 10-day trial that took place in 12-day period from 3/2/2020-3/13/2020);  
22 *Ramos v. Banner Health*, No. 15-2556, ECF No. 380 (D. Colo. July 7, 2021) (bench trial

23  
24 <sup>3</sup> The out-of-circuit cases Plaintiff cites do not support his argument. *See Bd. of Trustees, Sheet Metal Workers'*  
25 *Nat'l Pension Fund v. Elite Erectors, Inc.*, 212 F.3d 1031, 1037 (7th Cir. 2000) (case not involving a motion to  
26 transfer but appeal of the denial of a motion to set aside a default judgment; discussing 28 U.S.C. § 1404(a) only in  
*dicta* when reviewing personal jurisdiction and suggesting that if the forum at issue were inconvenient for the  
defaulting defendants, they *should* have moved to transfer); *Chamberlain v. U.S. Bancorp Cash Balance Ret. Plan*,  
No. 04-0841, 2005 WL 2757921 at \*3 (S.D. Ill. Oct. 25, 2005) (quoting the *dicta* from *Elite Erectors* and merely  
stating that U.S. Bancorp would have little difficulty litigating in Southern District of Illinois).

1 anticipated over the course of 10 days – January 6-9 and January 13-16, 2020).

2 Further, depending on the Court’s schedule, trial days may not be consecutive, meaning  
3 Defendants and their witnesses would have to travel back and forth between Wisconsin and  
4 Washington. Given the much larger number of parties and witnesses who would be  
5 inconvenienced by proceeding in Washington, this factor weighs in favor of transfer. *See* Defs’  
6 Br. at 11-12.

7 4. Private Factor - Plaintiff’s Cause of Action Has Substantial Contacts with  
8 Wisconsin.

9 Plaintiff again argues that because he lived, worked and accessed Plan documents in  
10 Washington, those are “contacts relating to his cause of action,” thus weighing against transfer.  
11 As noted, his residence and employment in Washington are irrelevant to the alleged conduct  
12 underlying his claims. His lawsuit claims that Defendants breached their fiduciary duties by  
13 negotiating and maintaining excessive administrative fees for the Plan and allowing the Plan to  
14 offer overpriced and imprudent investments. All of these alleged breaches occurred in  
15 Wisconsin and arose from a Plan negotiated and executed in Wisconsin. Brand Decl. at ¶ 4 (Dkt.  
16 26). Moreover, the majority of Defendants and potential witnesses involved in Plan  
17 administration reside in or around Wisconsin. *Id.*, ¶¶ 7-8. While Plaintiff points out that a  
18 Generac subsidiary undertook business in Washington and had a few employees in the state in  
19 addition to himself, these sorts of contacts have little relevance to this factor, which focuses on  
20 the conduct giving rise to the cause of action. *Cf., e.g., T-Mobile USA, Inc. v. Auto-Owners Ins.*  
21 *Co.*, No. 20-0567, 2020 WL 4788021 at \*9 (W.D. Wash. Aug. 18, 2020) (suggesting this factor  
22 weighed in favor of transfer to Michigan in insurance coverage dispute where a substantial part  
23 of the events or omissions giving rise to the claim occurred there and Washington’s connection  
24 to the case “consists only of the fact that Defendant purportedly insured a Washington  
25 company.”). This factor still weighs in favor of transfer.

1                   5.     Private Factor - The Availability of Process to Compel the Attendance of  
2                             Unwilling Witnesses Favors Transfer.

3             Plaintiff argues that the availability of process is neutral because “[t]here are currently no  
4 known non-party witnesses in this case” (Pl’s. Opp. at 17), completely ignoring Defendants’  
5 explanation that there are, in fact, such non-party witnesses. Defs’ Br. at 13. Specifically, there  
6 are several employees of Generac who assisted with the administration of the Plan, but who no  
7 longer are employed by Generac and cannot be treated as party witnesses. *Id.* As previously  
8 stated, these individuals reside in Wisconsin, and they are unlikely to travel willingly from  
9 Wisconsin to Washington for trial. Defs’ Br. at 13 (citing Brand Decl. ¶ 18, Dkt. 26). This  
10 weighs in favor of transfer. *See, e.g., Arete Power, Inc. v. Beacon Power Corp.*, No. 07-5167,  
11 2008 WL 508477 at \*10 (N.D. Cal. Feb. 22, 2008).

12                   6.     Private Factor - Transfer to the Eastern District of Wisconsin Will Provide  
13                             Greater Access to Sources of Proof.

14             Plaintiff argues that this factor is neutral because documents should be available  
15 electronically. Pl’s. Opp. at 17-18. But he fails to address that the sources of proof include not  
16 just documents, but also witnesses. *See Weyerhaeuser Co. v. AIG Prop. Cas., Inc.*,  
17 No. 20-01371, 2021 WL 1575364 at \*8-9 (W.D. Wash. Apr. 22, 2021) (“This factor considers  
18 location of witnesses, documentary evidence, and inventory to be inspected, if any”; finding  
19 “ease of access to witnesses” in alternate forum weighed in favor of transfer). Here, as Plaintiff  
20 has conceded, the majority of likely witnesses reside in and around Wisconsin, making this  
21 factor weigh in favor of transfer.

22                   7.     Private & Public Factors - The Difference in Litigation Costs for Each  
23                             Forum Favors Transfer to Wisconsin, and Court Congestion is Neutral.

24             Plaintiff attempts to downplay the litigation costs and inconvenience to the witnesses of  
25 attending trial in Washington by stating that “even if there is [a trial], it would only require a day  
26 or two.” Pl’s Opp. at 16. As noted above, similar ERISA “excessive fees” cases that have gone

1 to trial have typically taken weeks to try. *See supra* at 7-8. There is a significant difference in  
2 the burden imposed on witnesses between Plaintiff's "day or two" estimate and the reality that  
3 trials of this nature can take better part of a month. In light of the anticipated burden of requiring  
4 witnesses living in Wisconsin to spend significant time in Washington for trial, this factor  
5 weighs in favor of transfer.

6 Plaintiff also intertwines a public factor – administrative difficulties from court  
7 congestion – in his argument, stating that court congestion is similar in the Seventh and Ninth  
8 Circuit, and there is "not likely to be a meaningful difference in the time it will take either  
9 district to resolve this case." Pl's Opp. at 16. In light of the valid forum selection clause, this  
10 neutral public factor does not help Plaintiff carry his burden to show that the public-interest  
11 factors overwhelmingly disfavor a transfer.

12 8. Public Factor - Courts in the Seventh Circuit Have Great Familiarity with  
13 ERISA Lawsuits Like This One.

14 Plaintiff neither disputes that the Seventh Circuit has an extremely robust body of law  
15 regarding the ERISA issues raised in his Complaint, nor that one of the law firms representing  
16 him has filed at least ten virtually identical lawsuits in that Circuit. Instead, he argues that there  
17 is also a very well-developed body of law in the Ninth Circuit. At most, this demonstrates that  
18 this factor is neutral. Again, this cannot demonstrate that public-interest factors overwhelmingly  
19 disfavor a transfer.

20 9. Public Factor - Public Policy Considerations Strongly Favor Transfer.

21 Plaintiff again relies on his residence and work in Washington as basis for his public  
22 policy arguments, as well as his argument that he is individually less able to shoulder any  
23 burdens while at least one of the Defendants is a corporation. Despite these arguments, public  
24 policy would be best served by transfer to the Eastern District of Wisconsin. There is minimal  
25 state interest in resolving this putative class action in the Western District of Washington,  
26 because although Plaintiff lives and worked there, most putative class members do not.

Moreover, Plaintiff does not address authority holding that a state “has little interest” in keeping ERISA litigation in local courts where the Plan was not administered locally and the defendants are not local corporations. *See, e.g., Wallace*, 2020 WL 4938361 at \*7. While Plaintiff claims it is unlikely the Plan would suffer any diminishment of assets as the Defendants would be responsible for any settlement or judgment, this fails to address that the Plan would be adversely affected if the employees and fiduciaries who operate the plan would have to abandon their duties to attend the trial in Washington. *See Fox v. Massey-Ferguson, Inc.*, No. 93-74615, 1995 WL 307485 at \*4-5 (E.D. Mich. Mar. 14, 1994) (granting motion to transfer to Wisconsin and noting that if the case were transferred, the individuals responsible for administering the plan located in Wisconsin “would be able to continue to perform their duties” rather than having to go to Detroit). Ultimately, public policy weighs in favor of transfer, and Plaintiff cannot show that this public factor “overwhelmingly” disfavors one.

### III. CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court grant their Motion and transfer venue to the Eastern District of Wisconsin under 28 U.S.C. § 1404(a).

Respectfully submitted this 27th day of August, 2021.

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 27th day of August, 2021, I filed the foregoing  
3 DEFENDANTS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO  
4 TRANSFER VENUE TO THE EASTERN DISTRICT OF WISCONSIN via electronic means  
5 through the Court's Case Management/Electronic Case File system, which will send an  
6 automatic notification of filing to each party registered for electronic service.

7 SIGNED THIS 27th day of August, 2021 at Seattle, Washington.

8 OGLETREE, DEAKINS, NASH, SMOAK  
9 & STEWART, P.C.

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